IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8615 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MARUBHAI MANDANBHAI MARU

Versus

BHAIBHAI SAMUDAYIK MANDI

Appearance:

1. Special Civil Application No. 8615 of 2003

MR ASHISH M DAGLI for Petitioner No. 1

MR BAIJU JOSHI for Respondent No. 1,4-21

Mr.Desai,AGP for Respondent No. 2-3,22

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 25/09/2003

ORAL JUDGEMENT

Rule. Mr.Joshi and Mr.Desai, Ld.AGP waive service of rule on behalf of respective respondents. With the consent of learned advocates matter is taken for

final hearing today.

2. The present petition is preferred by the petitioner challenging the legality and validity of the order dated 8.5.03 passed by the Dy.Secretary of the State Govt whereby the revision application has been dismissed for default.

3. Having heard Mr.Dagli, Ld.advocate for the petitioner and Mr.Desai, Ld.AGP for respondent Nos. 2,3 and 22 and Mr.Joshi for remaining respondents, it appears that the petitioner has submitted written arguments and therefore the petitioner was under impression that the matter will be decided on the basis of written arguments submitted by the petitioner. Mr.Desai, Ld.AGp submitted that it was on account of transfer of earlier officer since the Dy.Secretary who resumed the charge wanted to be well apprised of the facts the notice was issued. Otherwise, Mr.Desai has submitted that even by the verification of the record it is found that the written arguments of the petitioner were already there on the record.

4. Under the above circumstances, I find that the Dy.Secretary of the State Govt was not justified in dismissing the revision application for default and when the written arguments were already submitted he could have rendered his decision on merits on the basis of such written arguments. Therefore, the order, dated 8.5.03 passed by the Dy.Secretary, State Govt dismissing the revision for default can not stand in the eye of law.

5. Mr.Dagli for the petitioner as well as Mr.Joshi during the course of hearing have submitted that if the hearing is fixed by the Dy.Secretary the petitioner as well as private respondents shall appear through their advocates and shall make their oral submission on the basis of material available on record and they have no objection if the matter is decided by the Dy.Secretary afresh.

6. Considering the above, I find that the following directions shall meet with the ends of justice:

(i) The order, dated 8.5.03 passed by the Dy.Secretary, State Govt dismissing the revision for default is quashed and set aside.

(ii) The Dy.Secretary shall fix the date of hearing within a period of one month from today and both parties shall positively remain present before the Dy.Secretary on the date fixed for hearing and after hearing both sides on the scheduled date, the Dy.Secretary shall render decision within a period of one month from the date of conclusion of hearing.

7. Petition is allowed in terms of aforesaid directions. Rule is made absolute. In the facts and circumstances of the case, there shall be no order as to costs.

DS permitted.

25.9.03 (JAYANT PATEL,J)